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Applicant's Name: Beth A. Lange et al.
Serial No. (Control No.): 09/998,500 Examiner: Kidwell
Filing Date: 11/30/01 Art Unit: 3761 Confirmation No.: 6529
Application Title: BREAST PAD ASSEMBLY CONTAINING A SKIN BENEFIT
INGREDIENT

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AUG 01 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Beth A. Lange, et al. Art Unit: 3761
Serial No.: 09/998,500
Filed: November 30, 2001
Confirmation No.: 6529
For: BREAST PAD ASSEMBLY CONTAINING A SKIN BENEFIT INGREDIENT
Examiner: Michele M. Kidwell

August 1, 2005

REPLY BRIEF

This is a reply to the Examiner's Answer mailed
June 29, 2005.

Appellant's Comments on the Examiner's Response to Argument

In the Appeal Brief, the Appellant interpreted the objection to the specification as equivalent to a rejection of the claims for lack of written description under 35 U.S.C. §112, first paragraph, and argued that the limitation "suitable for ingestion by a suckling infant," is supported by the original disclosure. In response to the Appellant's arguments, the Examiner's Response states that a 35 U.S.C. §112 first paragraph rejection was never made, and therefore the Appellant's arguments addressing this issue are moot. The Examiner's Response further states that the specification was objected to for failing to provide proper antecedent basis for the claimed subject matter, and that this objection has not been addressed by the Appellant.

In contrast to the Examiner's assertion, the Appellant's arguments in the Appeal Brief have addressed the objection to the specification, and have shown antecedent basis in the specification for the phrase "suitable for ingestion by a suckling infant." In addition, Appellant notes that although

KCC 4775 (K-C 17,129)
PATENT

there should be clear support or antecedent basis in the specification for terminology used in the claims, exact terms need not be used in *haec verba* to satisfy the written description requirement of 35 U.S.C. §112, first paragraph,¹ and there need only be substantial correspondence between the language of the claims and the language of the specification.² As discussed more fully in the Appeal Brief, the phrase "suitable for ingestion by a suckling infant" is simply a rewording of a phrase that is consistently present in the original disclosure, and direct support for this phrase can be found in numerous passages throughout the specification. As such, the specification provides antecedent basis for the phrase "suitable for ingestion by a suckling infant," and the objection to the specification should be withdrawn.

Conclusion

In addition to the reasons set forth in Appellant's Appeal Brief, the objection to the specification and the rejections of the claims on appeal are in error for the reasons set forth above. Therefore, appellants request that the Examiner's objection to the specification be withdrawn and the rejections of claims 1-71 be reversed. Appellant does not believe that any fee

¹ See MPEP §1302.01, which states:

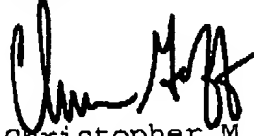
There should be clear support or antecedent basis in the specification for the terminology used in the claims. Usually, the original claims follow the nomenclature of the specification; but sometimes in amending the claims or in adding new claims, applicant employs terms that do not appear in the specification. This may result in uncertainty as to the interpretation to be given such terms...It should be noted, however, that exact terms need not be used in *haec verba* to satisfy the written description requirement of the first paragraph of 35 U.S.C. 112.

² See MPEP §1302.01 and 37 CFR 1.121(e).

KCC 4775 (K-C 17,129)
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is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 19-1345.

Respectfully submitted,



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